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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,184	11/12/2003	Dennis J. Sammut	SAMMUT-07597	6125
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Casimir Jones, S.C. 440 Science Drive Suite 203 Madison, WI 53711				
EXAMINER				
CLEMENT, MICHELLE RENEE				
ART UNIT		PAPER NUMBER		
3641				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/706,184

## Applicant(s)

SAMMUT ET AL.

## Examiner

Michelle (Shelley) Clement

## Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 45-87 is/are pending in the application.
- 4a) Of the above claim(s) 48, 49, 55-72, 81-83 and 85-87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-47, 50-54, 73-80, 84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 11/17/08 have been fully considered but they are not persuasive. In response to applicant's contention that Brown does not anticipate the claims, it is noted that Brown does disclose the claimed firearm reticle. The fact that Brown does not utilize the claimed **terms** is irrelevant in that the figures show the claimed elements. The Figures show that the abutting edges are simultaneously visible lines, furthermore the lines are arranged in the claimed configuration, the lines can be utilized to provide an aiming point. Just as applicant can be his own lexicography, so may the patentee of the prior art. In response to applicant's contention that there is no reasonable expectation of success in combining the teaching of Brown with the device disclosed by Reed. In order to support a rejection under 35 U.S.C. 103(a) the rejection must set forth (A) the relevant teachings of the prior art relied upon, (B) the differences in the claim over the applied references, (C) the proposed modification of the applied references necessary, and (D) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made. In the present application, it would have been obvious to one skilled in the art to substitute one reticle for the other to achieve the predictable result of increasing the number of cross-hairs on a reticle. In response to applicant's contention that there is no reasonable expectation of success in combining the teaching of Brown with the device disclosed by Reed and Cohen. In order to support a rejection under 35 U.S.C. 103(a) the rejection must set forth (A) the relevant teachings of the prior art relied upon, (B) the differences in the claim over the applied references, (C) the proposed modification of the applied references necessary, and (D) an explanation as to why the claimed

invention would have been obvious to one of ordinary skill in the art at the time the invention was made. In the present application, it would have been obvious to one skilled in the art to substitute one reticle for the other because the substitution of one known element for another would have yielded predictable the result of sighting a target through a scope. In response to applicant's contention that there is no reasonable expectation of success in combining the teaching of Brown with the device disclosed by Reed and Wascher. In order to support a rejection under 35 U.S.C. 103(a) the rejection must set forth (A) the relevant teachings of the prior art relied upon, (B) the differences in the claim over the applied references, (C) the proposed modification of the applied references necessary, and (D) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made. In the present application, it would have been obvious to one skilled in the art to substitute one reticle for the other because the substitution of one known element for another would have yielded predictable the result of sighting a target through a scope. In response to applicant's contention that there is no reasonable expectation of success in combining the teaching of Brown with the device disclosed by Wascher. In order to support a rejection under 35 U.S.C. 103(a) the rejection must set forth (A) the relevant teachings of the prior art relied upon, (B) the differences in the claim over the applied references, (C) the proposed modification of the applied references necessary, and (D) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made. In the present application, it would have been obvious to one skilled in the art to substitute the round shape and thereby inherently shorter secondary horizontal cross-hairs

as disclosed by Wascher et al for the square shape and longer secondary cross-hairs as taught by Brown to achieve the predictable result of providing a reticle without sharp edges.

***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 45, 46, 47, 50, 51, 53, 73, 75-80 and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed (US Patent # 4,695,161) in view of Brown (US Patent # 2,450,712). Reed discloses a ballistics calculator system for computing targeting information to hit a target, comprising a processor, the processor comprising a ballistics computer program for analyzing information to accurately aim a firearm at a target using a target acquisition device with a reticle, the program using information regarding the target acquisition device and reticle being used, wherein the type of target acquisition device and reticle comprise, a reticle comprising a plurality of visible secondary horizontal cross-hairs at predetermined distances along a primary visible vertical cross-hair and a plurality of visible secondary vertical cross-hairs at predetermined distances along at least some of the visible secondary horizontal cross-hairs and an output using the visible secondary horizontal cross-hairs and visible secondary vertical cross-

hairs to identify an aiming point for hitting the target. The reticle comprises a visible primary vertical and visible horizontal cross-hair. At least some of the visible secondary horizontal and visible vertical cross-hairs are evenly spaced and are connected to form a grid. Information regarding the target acquisition device and reticle being used can include the positional relationship between the target acquisition device and the firearm. The device further comprises a housing, means for mounting the housing in a fixed predetermined position relative to a firearm. The target acquisition device further comprises an objective lens mounted in one end of the housing and an ocular lens mounted in an opposite end. The target acquisition device further comprises a projected image and is configured to display information on a display screen, wherein the information displayed is an image of a reticle. The reticle is in the focal plane. Reed discloses the plurality of cross-hairs wherein the non-activated lines are *essentially* invisible (i.e. not completely invisible, the lines are LCD which can always be faintly seen) but does not expressly disclose wherein the plurality of cross-hairs are simultaneously visible and the primary vertical and horizontal cross-hairs intersect at the optical center of the reticle, Brown does. Brown teaches a reticle comprising a plurality of simultaneously visible secondary horizontal cross-hairs intersecting at predetermined distances a *simultaneously* visible primary vertical cross-hair, and a plurality of *simultaneously* visible secondary vertical cross-hairs intersecting at predetermined distances at least some of the secondary horizontal cross-hairs. Because both references teach reticles for sighting devices, it would have been obvious to one skilled in the art to substitute one reticle for the other to achieve the predictable result of increasing the number of cross-hairs on a reticle.

5. Claims 52 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed and Brown as applied to claims 45 and 46 above, and further in view of Wascher et al. (US Patent # 5,491,546). Although Reed does not expressly disclose the primary vertical and horizontal cross-hairs intersecting at the optical center of the reticle, at least some of the secondary horizontal and vertical cross-hairs having identifying marks, and the reticle including range finding markings on the reticle, Wascher et al. does. Wascher et al. teaches a target acquisition device and reticle, wherein the reticle comprises primary vertical and horizontal cross-hairs that intersect at an optical center of the reticle and wherein at least some of the secondary horizontal and vertical cross-hairs have identifying marks, the reticle further including range finding marks on the reticle. Wascher et al. and Reed are analogous art because they are from the same field of endeavor: target acquisition devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the position of the reticle and identifying marks as taught by Wascher et al. with the device as taught by Reed. The suggestion/motivation for doing so would have been to obtain a sighting system that included the range determining features for more accurate aiming as suggested by Wascher et al.
6. Claim 74 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed and Brown as applied to claim 45 above, and further in view of Cohen (US Patent # 5,375,072). Although Reed does not expressly disclose that the device comprises an elevation knob and the system providing an output of how much the knob should be turned to adjust a position of the target acquisition device relative to the firearm, Cohen does. Cohen teaches the processor and the target acquisition device being separate units wherein the processor provides an output informing the user how much a windage knob must be turned to adjust a position of the target acquisition

device so that an intersection of the primary vertical cross-section and the primary horizontal cross-hair can be used as the aiming point. Cohen and Reed are analogous art because they are from the same field of endeavor: target acquisition devices. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the separation of components as taught by Cohen with the device as taught by Reed, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art and Cohen specifically teaches the components separately.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michelle (Shelley) Clement/  
Primary Examiner, Art Unit 3641